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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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THERESA DUNPHY

Plaintiff,

ALASKA AIRLINES, INC.,

Defendant.

Case No.: 2:17-cv-0050-RFB-GWF

[PROPOSED] ORDER GRANTING
MOTION TO APPOINT DENNIS
SCHAEFFER GUARDIAN AD LITE
FOR PLAINTIFF THERESA DUNPH
(ECF No. 47)

This matter came before the Court on Motion for Appointment of Dennis Schaeffer as Guardian Ad Litem for Plaintiff submitted by Plaintiff's Counsel. **ECF No. 47**. The Motion was unopposed.

A hearing on the Motion was held before the Honorable Magistrate Judge Foley on June 19, 2017. Appearing for Plaintiff was Counsel of Record, Victoria L. Neal, Esq., and appearing for Defendant was Counsel of Record, Jibraun Riaz, Esq. Mr. Dennis Schaeffer was also in attendance.

Having considered the papers and pleadings, and good cause appearing, the court finds and concludes as follows:

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FINDINGS OF FACT

1. Anuranjan Bist, M.D., Plaintiff's doctor since 2011, presented a declaration stating Plaintiff is currently incompetent.

2. Dennis Schaeffer, Plaintiff's long-time friend and roommate, presented a declaration based upon his personal knowledge and observations of Plaintiff's struggles with mental illness, that she currently is not mentally capable of understanding and participating in this civil action. Mr. Schaeffer also presented a declaration stating he has been apprised of the duties of a guardian ad litem and accepts the duties and responsibilities to work in the best interest of and on behalf of Plaintiff.

3. Plaintiff's Counsel of Record, James P. Kemp, presented a declaration that, based upon his observations of Plaintiff, he believes Plaintiff is not mentally or emotional well and is not in complete control of her faculties.

4. Plaintiff is currently not competent to handle her own affairs for the purposes of this civil action based on sufficient and credible documentation from Plaintiff's doctor, Plaintiff's long-time friend and roommate, and declaration from Plaintiff's counsel.

CONCLUSIONS OF LAW

1. Federal Rule of Civil Procedure 17(c) provides, in relevant part, that a “district court ‘must appoint a guardian ad litem — or issue another appropriate order — to protect a minor or incompetent person who is unrepresented in an action.’” *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (quoting FED. R. CIV. P. 17(c)).

2. The Ninth Circuit has found appointment of a guardian ad litem can be supported by a sworn declaration of the plaintiff, the sworn declaration by another person explaining plaintiff is mentally ill and does not understand the court's orders, and/or a statement by plaintiff's physician. *Allen v. Calderon*, 408 F.3d 1150, 1151-52 (9th Cir. 2005); *United States v. 30.64*

1 *Acres of Land*, 795 F.2d 796, 805 (9th Cir. 1986) (finding that the district court abused its
2 discretion in failing to appoint a guardian ad litem to represent a plaintiff because “the court was
3 clearly on notice that [plaintiff] claimed to be incompetent and his claim was made credible by
4 official documentation.”).

5 **NOW THEREFORE**, pursuant to FRCP Rule 17(c), with good cause appearing based
6 on sufficient and credible documentation, the Motion to Appoint Dennis Schaefer as Guardian
7 Ad Litem for Plaintiff Theresa Dunphy in this case only should be and hereby is **GRANTED**.
8 Dennis Schaefer is designated to make all decisions on behalf of Theresa Dunphy in this civil
9 action in her best interests.

10 **IT IS SO ORDERED:**

11 Dated: 6/21/2017

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13 UNITED STATES MAGISTRATE JUDGE
14 HONORABLE GEORGE FOLEY, JR.
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